

Authors' rights, Open Access and the public use of reason

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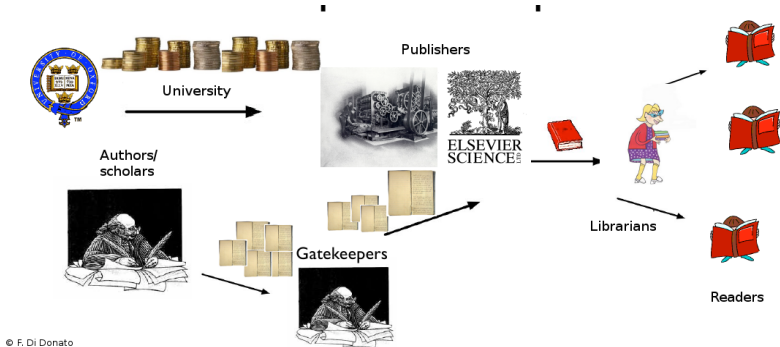
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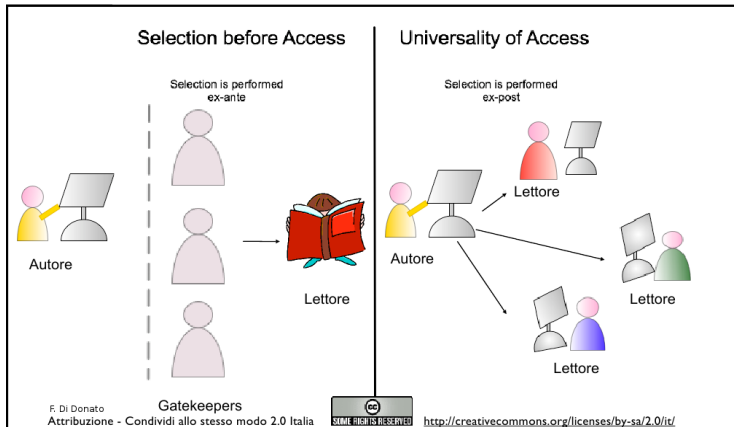
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Publishing and filtering
Definitions

Filter, then publish



Publish, then filter



Open access publishing

Peter Suber

Open-access (OA) literature is

- digital,
- online,
- free of charge,
- free of most copyright and licensing restrictions

Green road: self-archiving

- Disciplinary (e.g. arXiv) and institutional repositories (e.g. DASH for Harvard)
- Publisher copyright policies & self-archiving:
<http://www.sherpa.ac.uk/romeo/>

Gold road: open access journals

- DOAJ <http://doaj.org/>
- “Predatory” open access
 - ① lowbrow:
<http://scholarlyoa.com/individual-journals/>
 - ② highbrow: double dipping

The principle zero of OA

Research that is funded by the taxpayer should be available to the taxpayer.

Hero: Robin Osborne on OA (gold)

Why open access makes no sense

What Humanities research expects to do is bring out the significance of correlations by putting them into a framework. That framework depends upon, and displays, the understanding that the researcher has achieved.

Publishing research is a pedagogical exercise, a way of teaching others, not a way of giving others information which they are expected to handle on the basis of what they have already been taught.

(Pure?) research: think process, not product

- product** the commissioning company supplies the question;
the (commercial) researcher delivers his results
- process** the academic researcher supplies the question and
looks for correlations and frameworks: publishing is
just one moment in a continuum

Zero: Robin Osborne on OA (gold)

It is all about understanding . . .

Academic research publications deal not in sets of facts or figures but in understanding. But academic research publication is a form of teaching that assumes some prior knowledge. For those who wish to have access, there is an admission cost: they must invest in the education prerequisite to enable them to understand the language used. Current publication practices work to ensure that the entry threshold for understanding my language is as low as possible. Open access will raise that entry threshold.

Much more will be downloaded; much less will be understood .

Plato's influence

Phaedrus 275a on the invention of letters

For this invention will produce forgetfulness in the minds of those who learn to use it, because they will not practice their memory. Their trust in writing, produced by external characters which are no part of themselves, will discourage the use of their own memory within them. You have invented an elixir not of memory, but of reminding; and you offer your pupils the appearance of wisdom, not true wisdom, for they will read many things without instruction and will therefore seem to know many things, when they are for the most part ignorant and hard to get along with, since they are not wise, but only appear wise.

... with a twist

Metaphorically: Plato requires an investment in learning

Literally: Osborne is just satisfied with an investment.

Let's not throw the baby out with the bath water

Publish *and* perish?

The public use of reason in a lively research environment is about processes, not products.

- Why, then, is it so easy to over-emphasize products and money as proxy for research?
- Is there a way to publish without perishing?

Why are Kant's ideas on copyright worth studying?

- Kant does not rely on intellectual property;
- he finds, however, a way to advocate authors right
- in an environment where publishing requires(-d?) a kind of mediation

Relevant works

- 1785: *Von der Unrechtmäßigkeit des Büchernachdrucks* (*On the Injustice of Reprinting Books*)
- 1797: *Metaphysik der Sitten, Rechtslehre*, § 31, II

What is a book?

A book can be seen

- ① as a material object
- ② as a means of conveying thoughts
- ③ as a speech

1. The book as a material object

- ① It may be reprinted freely
- ② for the very principle of private property
- ③ if it has been purchased in a legal transaction

Property

It makes it easier to alienate things...

2. The thoughts “contained” in a book

- 1 They are not affected by books reprinting:
- 2 As such, they are non-excludable and non-rivalrous
- 3 Authors can keep on thinking them and being recognized as their parents, even if their books are reprinted

3. The book regarded as a speech

- ① It is an action
- ② It is, in other words, a way a way a relationship with a public

iura personalia

It is not a matter of right on things (*iura realia*) but of personal rights (*iura personalia*)

Ius personale

A right entitling someone to obtain acts from other persons

«the possession of another's choice [Willkür], in the sense of my capacity to determine it by my own choice to a certain deed»
(MdS, §18, AA.06 271:04-10)

As moral subjectivity involves freedom, personal rights cannot be established without the concerned persons' consent.

(Un)authorized spokespersons

- The book is a medium through which authors can transmit their speeches to a public.
- In the age of printing, such a medium was provided by publishers.
- Thus publishers can be considered as spokespersons who speak in the name of the authors.
- As such, they need the authors' authorization.
- A pirate publisher is like an unauthorized spokesperson.

A copyright very narrow in scope

- It applies to texts (=speeches)
- It does not apply to works of art (=things)
- It does not apply to derivative works (=new, different speeches)
- It does not apply to personal copies that are not distributed to the public

The public is a stakeholder

- The publisher may neither refuse to publish – or to hand over to another publisher – a text of a dead author, nor release mutilated or spurious works, nor print only a limited impression that does not meet the demand
- If the publisher does not comply, the public has the right to force him to publish.

Medium means “means”

Publishers rights are justified *if and only if* they help authors to reach the public.

Dropping the exclusivity requirement

- 1 1785 essay: A publisher becomes willing to publish a book only if he is certain to earn something from it
- 2 1797 (Mds): the exclusivity requirement is dropped

Medium means “means”

If the technological constraints of printing are overcome, why should not authors be entitled to authorize everyone to distribute their works to everyone else? (CC style)

Interlude: Algorithmium: a natural element - o a kind of “reprinter”?

C. Sandvig, The Facebook “It’s Not Our Fault” Study

Last year there was a tremendous controversy about Facebook’s manipulation of the news feed for research. In the fracas it was revealed by one of the controversial study’s co-authors that based on the feedback received after the event, many people didn’t realize that the **Facebook news feed was filtered at all.**

Beweis der Unrechtmäßigkeit des Büchernachdrucks (1793)

- Originality implies property
- A pirate reprinter is like a thief

What is really mine?

According to Fichte, we can distinguish two aspects of a book:

- ① its physical aspect (*das körperliche*) i.e. the printed paper
- ② its ideational aspect (*das geistige*), which includes:
 - ① a material aspect, i.e. the ideas the book presents
 - ② the form of these ideas, i. e. the very personal way in which they are presented

Originality means property

Fichte's (intellectual) property axiom

«We are the rightful owners of a thing, the appropriation of which by another is physically impossible»

As the form can be only his, the author is the proprietor of his text and his authorized publisher is its usufructuary.

Kant is different from Fichte

- ❶ Fichte bases copyright on the individual originality in the form of expression; Kant does not mention originality at all;
- ❷ Fichte equates copyright with private property; Kant rejects the very possibility of founding the authors' right on a *ius reale*;
- ❸ Fichte thinks that copyright violators deserve the same harsh punishment of thieves. According to Kant, the unauthorized printer should simply compensate the damages;

and, above all . . .

According to Kant, the public is a stakeholder




- 1 books are about communication (process), not about property (product);
- 2 authors rights concern only their freedom to choose their way of interacting with the public, if a mediation is needed

More than a machine: Respublica noumenon




Kant, An Answer to the Question: "What is Enlightenment?"

But in so far as this or that individual who acts as part of the machine also considers himself as a member of a complete commonwealth or even of cosmopolitan society, and thence as a man of learning who may through his writings address a public in the truest sense of the word, he may indeed argue without harming the affairs in which he is employed for some of the time in a passive capacity.

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